

REMARKS

Receipt of the Office Action mailed May 8, 2009 is hereby acknowledged.

Reconsideration and withdrawal of the rejections in view of the foregoing amendments and the following remarks.

Amendments

As requested by the Examiner, applicant has provided herewith a substitute specification, along with a markup of the original specification, showing the changes.

Claim 1 has been amended to recite that the ratio of active substance to polysorbate is no greater than 3:7 by weight (supported in the specification at page 4, last line), and that the active agent is micelled such that the individual micelles have a size not greater than about 40 nm (supported in the specification at page 2, last line). Claim 1 has also been amended to recite more conventional U.S. terminology.

Claims 19, and 21-23, which have been withdrawn from consideration have been amended so that they can be rejoined to the elected claims upon allowance of those claims.

Applicant has also cancelled claims 2-18 and 24 and added new claims 25-42. The new claims are supported generally in the specification and by the original claims.

No new matter has been added.

Restriction

The Examiner restricted out claims 19-24. Applicants affirm their provisional election of the claims of Group I, without prejudice to their right to the rejoinder of the claims of Group II.

Claim Objections

The amendments to the claims have obviated the claim objections made by the Examiner.

Rejection under 35 U.S.C. § 112

Claims 1-18 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for a variety of reasons. Applicant submits that the amended claims obviate these rejections, and requests their reconsideration and withdrawal. With respect to the rejection of claim 10, applicant notes that a “conjugated linoleic acid triglyceride” is a specific variety of “linoleic acid triglyceride.” Therefore the phrase “conjugated linoleic acid triglyceride” in claim 10 (now claim 31) has adequate antecedent basis in the phrase “a linoleic acid triglyceride” from claim 1.

Applicant respectfully submits that the claims are in full compliance with the requirements of § 112.

Prior Art Rejections

Claims 1 and 2 were rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Hirsh , U.S. Patent No. 3,052,608 (“Hirsch”). Claims 1-4 were rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Echols, et al., U.S. Patent Publication No. 2004/0142038 (“Echols”). Claim 1 was further rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Conklin, U.S. Patent No. 6,444,253 (“Conklin”). Claims 5 and 9 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hirsh. Claims 11 and 12 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Echols in view of Hirsh. Claims

6-8, 10, and 13-18 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Conklin and further in view of Hirsh.

Applicant respectfully traverses these rejections. Each of the cited references recites compositions which contain other ingredients besides the active ingredient and the polysorbates, in particular water (Hirsch, see col. 2, line 27), polyvinylalcohol, polyvinylacetate, a hydrophilic polymer and a phospholipid (Echols, p. 2, ¶ [0018]), or an alcoholic composition (Conklin, col. 3, line 4). By contrast, the presently claimed concentrates use the transitional phrase “consisting of” and therefore exclude the extra components recited by the cited references.

Moreover, none of the references teach or suggest that the active agent is micelled such that the individual micelles have a size not greater than about 40 nm, or teach the specific ratios of active ingredient to polysorbates as recited by the presently pending claims. These ratios permit the specific micelled structure recited in the claim to be obtained. This micelled structure significantly enhances the resorption and penetration of the active agent by the skin or the intestine, and thereby increases their usefulness. None of this is taught or suggested the cited references.

Accordingly, applicants respectfully submit that the present claims are patentable over the cited references.

Conclusion

All objections and rejections have been complied with, properly traversed, or rendered moot. Thus, it now appears that the application is in condition for allowance. Should any questions arise, the Examiner is invited to call the undersigned representative so that this case may receive an early Notice of Allowance.

Favorable consideration and allowance are earnestly solicited.

Respectfully submitted,

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